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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

1 I, Thane D. Somerville, state and declare as follows:

- 2 1. I am legal counsel of record for Plaintiff Hoopa Valley Tribe in this proceeding.
- 3 2. I certify that required meet and confer efforts have been exhausted in advance of
4 filing Plaintiff's motion for preliminary injunction.
- 5 3. On December 12, 2022, I participated in a video conference call with Defendants'
6 legal counsel in this action in which I informed them that Plaintiff intended to file
7 motions for temporary restraining order and preliminary injunction to enjoin
8 implementation of the Trinity River Winter Flow Variability Project, which was at
9 that time scheduled to commence implementation on December 15, 2022.
- 10 4. During the December 12 video conference call, Hoopa further requested, and the
11 parties discussed, that Defendants not approve or withdraw approval of the WVF
12 Project in the absence of Hoopa concurrence in order to avoid the need for motions
13 for temporary restraining order and preliminary injunction.
- 14 5. In the December 12 call, Defendants' representatives stated they would confer
15 internally and respond back to Hoopa representatives by the close of business
16 December 13. On December 13, I received an e-mail from Defendants' counsel, a
17 true and correct copy of which is attached as Exhibit 6 to this Declaration.
- 18 6. On December 14, in response to the December 13 e-mail communication, the Hoopa
19 Chairman sent an e-mail to federal Defendants' representatives, including
20 Defendants' counsel informing Defendants of Hoopa's intent to file the motions for
21 TRO and preliminary injunction on December 16 and to seek a hearing as soon as
22 possible the week of December 19 unless federal Defendants agreed, no later than
23 5:00 PM (Eastern) on December 15, 2022, to honor Hoopa's concurrence rights and
24 agree to not proceed with the WVF project. A true and correct copy of that
25 correspondence is attached as Exhibit 5 to the Declaration of Joe Davis, filed today.

26

DECLARATION OF THANE SOMERVILLE RE
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION - 2

1 7. Defendants' counsel responded to this letter on December 15, 2022 via e-mail, a true
2 and correct copy of which is attached as Exhibit 7 hereto. The e-mail states, in part,
3 "As the parties agree that it is not in anybody's benefit to attempt to address the
4 Tribe's concerns through an expedited motion for a TRO, the Interior Department
5 advises that it is considering the Tribe's December 14 letter, and is willing to commit
6 to give the Tribe at least 5 business days notice before any decision is made with
7 respect to the Trintiy River (sic) Council's vote to recommend the winter flows, and
8 at least 10 business days notice before the implementation of any such decision."

9 8. Plaintiff's and Defendants' representatives and legal counsel again conferred on
10 December 16, 2022 via video conference call. I personally participated in this call.
11 Defendants' counsel again confirmed that no action would be taken by Defendants to
12 implement the WVF Project for a minimum of 15-business days (3 full weeks)
13 following delivery of a written notice from Defendants to the Tribe.

14 9. Plaintiff and their undersigned legal counsel have provided Defendants and their
15 counsel with actual notice of Plaintiff's intent and plan to file a motion for
16 preliminary injunction. Defendants' counsel are registered users of the CM/ECF
17 electronic filing system and will also receive additional timely actual notice and
18 service of Plaintiff's motions and related pleadings when electronically filed with the
19 Court.

20 10. Attached as Exhibit 1 is a true and correct copy of Section 3406(b)(23) of the Central
21 Valley Project Improvement Act, Public Law 102-575 (1992).

22 11. Attached as Exhibit 2 is a true and correct copy of the Trinity River Record of
23 Decision (2000).

24 12. Attached as Exhibit 3 are excerpts (Executive Summary, Chapters 1, 2, and 8) of the
25 Trinity River Flow Evaluation Report (June 1999) co-authored by the Hoopa Valley
26 Tribe and U.S. Fish and Wildlife Service.

DECLARATION OF THANE SOMERVILLE RE
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION - 3

13. Attached as Exhibit 4 is a true and correct copy of the 2021 Scoping Notice for Winter Flow Variability Action.

14. Attached as Exhibit 5 is a true and correct copy of a map entitled "Klamath Basin & Central Valley water supplies and facilities"

I declare under penalty of perjury under the laws of the United States of America that the foregoing statements are true and correct.

DATED this 16th day of December, 2022.

/s/ Thane D. Somerville

Thane D. Somerville

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such to the attorneys of record.

/s/ Thane D. Somerville
Thane D. Somerville

**DECLARATION OF THANE SOMERVILLE RE
PLAINTIFF'S MOTION FOR
PRELIMINARY INJUNCTION - 5**